
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

JIMMY WAGONER,

Petitioner,

versus

JOHN B. FOX,

Respondent.

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CIVIL ACTION NO. 1:08-CV-13

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Jimmy Wagoner, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

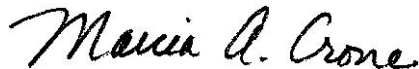
The court has conducted a *de novo* review of the objections in light of the pleadings and applicable law. After careful consideration, the court is of the opinion the objections are without merit. The magistrate judge correctly concluded that as petitioner is not contesting the fact or duration of his confinement, his claim may not be pursued in a habeas action. The magistrate judge also correctly concluded the court should not construe the filing as a civil rights lawsuit because at least three prior civil actions or appeals filed by petitioner were dismissed as frivolous

or for failure to state a claim and petitioner did not allege he was in imminent danger of serious physical harm.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this petition.

SIGNED at Beaumont, Texas, this 16th day of August, 2010.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE